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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,142	07/26/2001	Timothy M. Sivavec	RD-28314	2727

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EXAMINER
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MITCHELL, KATHERINE W

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 06/03/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/682,142

Applicant(s)

SIVAVEC ET AL.

Examiner

Katherine W Mitchell

Art Unit

3677

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 5. does NOT place the application in condition for allowance because:

Arguments presented in Request for Reconsideration have already been addressed and examiner's reasons have been thoroughly explained in the office action mailed 4/23/2003. Applicant has received 4 office actions and an in-person interview. Misquitta has been applied and discussed since the first office action. A further interview is not productive if it is to further argue the examiner's motivation to combine the previously cited references, as this had been thoroughly discussed. As the previous office actions and interview summary indicate, examiner believes Misquitta teaches in-well monitoring and wireless transmission and provides reasoning to use wireless transmission. Examiner has previously stated her opinion that the Misquitta reference is analogous art as concerning groundwater monitoring well data transmission. Per MPEP 713.09: Finally Rejected Application: "Normally, one interview after final rejection is permitted. However, prior to the interview, the intended purpose and content of the interview should be presented briefly, preferably in writing. Such an interview may be granted if the examiner is convinced that disposal or clarification for appeal may be accomplished with only nominal further consideration. Interviews merely to restate arguments of record or to discuss new limitations which would require more than nominal reconsideration or new search should be denied. See MPEP § 714.13."

Addressing in re Lee arguments regarding an improper combination of references: the motivation to use wireless technology is clear in the Misquitta reference, as discussed on page 15 para 7 of the office action mailed 4/23/2003.

Applicant argues that in-well transmission was taught by original specification paragraph [0030]. Examiner notes that paragraph [0030] is silent on transmission, and it appears applicant is referring to [0031], which was discussed in the final rejection in para 6 pages 12-15. Examiner does not see where [0031] or anywhere else in original application teaches that the transceiver and/or transmitter are in-well. As discussed in the final rejection, only the in-well units comprising at least one sensor and the sensors are disclosed as being in-well. The in-well data is transmitted wirelessly, but there is no teaching in the original specification, including Fig 4 (which does not show the well), that teaches that the transmitter/transceiver unit is inherently or explicitly in-well. Specifically, examiner finds that Fig 4 shows a hardwire connection in Fig 4 from the sensors 34 of the sensing unit 28 to the transmitter 32, as pointed out in page 13 of the final rejection in the underlined line beginning "The unit 28 includes a communications unit which is electronically coupled to the unit". and is taken directly from paragraph [0033] of the original specification. "Electronically coupled" inherently means hardwired. Thus examiner is required to interpret the phrase "in-well transmitting...by wireless communication" in view of the specification as wireless transmission at some point, with the transmitter not necessarily limited to being located inside the well.

Regarding applicant's request for identification of where applicant requested "how costs for labor and manpower are related to 'wireless'". On page 3 of applicant's request for reconsideration filed 3/31/2003, applicant stated at the end of the 3rd paragraph "Nor are costs for labor and manpower considerations relatable to 'wireless'", which examiner interpreted as an argument/request for clarification. Page 5 of applicant's request for reconsideration filed 3/31/2003, has numerous demands for citations, and that why examiner cited the teachings now questioned.

Addressing where applicant disclosed that wireless and wired communications were functionally equivalent: Claim 34 of the original application listed alternative communication transmission methods, "transmitted over a web connection, phone modem connection, ....wireless connection..." and paragraph [0031] of original specification states "the signals can be communicated...by any of a hardwired communication connection..., by a wireless communication connection...or by combinations of wireless and hardwired connections." Since applicant teaches a PRB, and states that either wireless or hardwired transmission is acceptable, applicant has indicated that wireless transmission is not required for passive PRB treatments.

Examiner recalls that applicant acknowledged that it was the pumping of the samples to obtain information that was disruptive in the interview in Feb 2003. Since the interview was over an hour in length, not all statements were summarized on the interview summary. If applicant does not now accept that statement, examiner will consider it withdrawn. However, there are numerous arguments by applicant (page 2 of applicant's request for reconsideration filed 3/31/2003, as also cited on page 8 of the applicant's pending request for reconsideration filed 5/20/2003, where the pumping is disclosed as disruptive, since applicant has wired apparatus in the well (Paragraphs [0031, 0034], examiner considers that the wire cannot be the disruptive feature.

Examiner provided the GE Report and the "Frequently asked Questions about hazardous Duty Pay for Federal Employees", the APWU Convention Bulletin and the Farrier document as evidence of support for commonly known motivations - that is, that costs are considered in long-term projects, that hazardous duty pay is often required for hazardous jobs, and that travel costs are often a consideration especially to remote locations. They were made of record on the PTO-982 sent with the final office action, as noted on the Office Action Summary. Applicant demanded citations in the previous request for reconsideration and thus these were provided, made of record, and are now considered relevant. As to applicant's respectful request "to explain the relevance of 'time is money, which is true in all fields, including, but not limited to, law, barrier (sic) work, and electrical conduit installation' ", applicant previously demanded a citation of travel time, and the noted reference included the "time is money" statement, and examiner noted its application in multiple fields as evidence of its universal applicability.

Applicant states that applicants argued in the Feb 2003 personal examiner interview that Misquitta discloses only above ground wireless transmission, but examiner notes that applicant did not make any argument about Misquitta teaching above-ground wireless communication, and in fact followed up with applicant's request for reconsideration filed 3/31/2003, in which applicant stated:

Applicant's previous argument on page 6 of applicant's request for reconsideration filed 3/31/2003, stated

"Applicants have carefully reviewed Misquitta. While Misquitta discloses a monitor that transmits a signal, the signal is transmitted by wire, not "wirelessly". See Misquitta col 8 lines 41-50."

Examiner does not agree with the new argument that Misquitta teaches "above-ground" wireless transmission. Nothing in Misquitta requires transmitter 810 to be above ground.

Applicant argues that in-well transmission was taught by original specification paragraph [0030], Fig 4, and original claims 55-63. Examiner notes that paragraph [0030] is silent on transmission, and it appears applicant is referring to [0031], which was discussed in the final rejection in para 6 pages 12-15. Examiner does not see where [0031] or any where else in original application teaches that the transceiver and/or transmitter are in-well - as discussed in the final rejection, only the in-well units comprising at least one sensor and the sensors are disclosed as being in-well. The in-well data is transmitted wirelessly, but there is no teaching in the original specification, including Fig 4 (which does not show the well), that teaches that the transmitter/transceiver unit is inherently or explicitly in-well. Specifically, examiner finds that Fig 4 shows a hardwire connection in Fig 4 from the sensors 34 of the sensing unit 28 to the transmitter 32, as pointed out in page 13 of the final rejection in the underlined line beginning "The unit 28 includes a communications unit which is electronically coupled to the unit". and is taken directly from paragraph [0033] of the original specification. "Electronically coupled" inherently means hardwired. Examiner agrees that wireless transmission was disclosed originally, but nothing originally teaches that the transmitter was in well. The only items taught as in-well are the sensing unit 28 and the sensors 34. Paragraph [0031] states "The module 18 or 20 includes a transceiver unit 26 and an electronically coupled sensing unit 28" Thus, the sensing unit and the transceiver unit are specifically disclosed as separate units and the transceiver unit, which includes the receiver 30 and transmitter 32 is not taught as in-well just because the sensing unit and sensors are. Fig 4 does not indicate the well and thus cannot teach that the transmitter is in-well. As explained, examiner interpreted the amendment, read in light of the specification, to mean that there was wireless transmission of in-well monitoring data, as that was all that was originally disclosed.

The request for the interview to discuss new arguments as proposed on page 16 is denied.

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The request for the interview to discuss ~~new~~ arguments as proposed on page 16 is denied.

Amended claim language is broad & more than 1 poss Inter and ~~Misquoting~~ examiner has chosen the only inter supported by the spec.